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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In Re:) Case No. 08-35653-KRH
CIRCUIT CITY STORES, INC., *et al.*¹) Chapter 11
Debtors.) (Jointly Administered)
)

STIPULATION AND AGREED ORDER IN THIRD-PARTY LITIGATION

Brandi M. Evans-Fose (“Ms. Fose”), David G. Fose (“Mr. Fose”) and Alfred H. Siegel, as Trustee (the “Trustee”), and not individually, but solely in his capacity as the Liquidating Trustee of the Circuit City Stores, Inc. Liquidating Trust (the “Trust,” and together with the Trustee, Ms. Fose, and Mr. Fose, the “Parties”), have conferred by and through their respective

¹ The Debtors in these chapter 11 cases (collectively, the “Case”), along with the last four digits of their respective federal tax identification numbers, are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbys Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512).

counsel and, subject to approval of the United States Bankruptcy Court for the Eastern District of Virginia (the “Bankruptcy Court”), HEREBY STIPULATE AND AGREE (the “Stipulation”) AS FOLLOWS:

WHEREAS, on September 10, 2010, the Bankruptcy Court entered its *Findings of Fact, Conclusions of Law and Order Confirming Modified Second Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and its Affiliated Debtors* (the “Confirmation Order”), which, *inter alia*, confirmed the *Modified Second Amended Joint Plan of Reorganization* (the “Plan”), and established the Trust; and

WHEREAS, the Trust maintains custody of certain of Circuit City Stores, Inc.’s (together with its affiliated companies, “Circuit City”) books and records; and

WHEREAS, a former Trust employee, Ms. Fose, is a named party in a divorce action adverse to Mr. Fose currently pending in the Circuit Court for the County of Hanover, Virginia, Case No. CL18-2342 (the “Hanover Action”); and

WHEREAS, Mr. Fose, through his divorce counsel, served, with neither notice nor leave of the Bankruptcy Court, the Trust with several Subpoenas *Duces Tecum* pertaining to, *inter alia*, Ms. Fose’s earnings, retirement plans, etc. and issued Subpoenas for Witness (Civil) to Katie Bradshaw (“Ms. Bradshaw”) and Jeff McDonald (“Mr. McDonald”), both in their capacity as Trust employees, and all pertaining to the Hanover Action (collectively, the “Hanover Subpoenas”); and

WHEREAS, the Hanover Subpoenas were issued in contravention of the Confirmation Order notwithstanding that the Trust had twice previously (a) informed Mr. Fose, through counsel, that leave of the Bankruptcy Court (as defined below) was necessary before any

subpoenas could be issued and (b) provided to Mr. Fose through counsel the requisite case authority for the same. Accordingly, upon learning of the violation of the Confirmation Order with the attempted issuance of the Hanover Subpoenas, the Trust filed its *Motion of the Circuit City Stores, Inc. Liquidating Trust to Enforce Terms of Confirmed Plan, for Protection from Foreign Subpoenas, and for Order to Show Cause as to Why Stiles Ewing Powers PC, Michael S. Ewing, Esquire, Mollie C. Barton, Esquire, and David G. Fose Should Not Be Held in Contempt* (the “Contempt Motion”); and

WHEREAS, on December 16, 2019, the Bankruptcy Court entered an Order (the “Contempt Order”) voiding the Hanover Subpoenas and continuing generally the contempt relief sought in the Contempt Motion (the “Remaining Contempt Relief”) subject to the filing of an additional notice of hearing to be held on not less than twenty-one (21) days’ notice; and

WHEREAS, after entry of the Contempt Order, Mr. Fose inquired as to whether the Trustee on behalf of the Trust would agree to allow limited participation of Ms. Bradshaw and Mr. McDonald in the Hanover Action and, thereafter, a stipulation and order was entered by the Bankruptcy Court between the Trust and Mr. Fose in an attempt to address the limited involvement of Trust personnel in the underlying evidentiary issues in the Hanover Action; and

WHEREAS, thereafter, Ms. Fose expressed a desire to have Trust personnel participate in the underlying Hanover Action in a limited, specified manner; and

WHEREAS, this Court entered a *Stipulation and Agreed Order in Third-Party Litigation*, ECF No. 14276, providing for, among other things, the Trust’s limited involvement in the Hanover Action; and

WHEREAS, Mr. Fose and Ms. Fose have represented that the Hanover Action has been resolved and neither will need the Trust's involvement in the Hanover Action or any other matter; and

WHEREAS, based on said representation, the Trust has agreed to withdrawal without prejudice the Remaining Contempt Relief with the reservation of renewing said request to the extent the Trust is brought back into the matter in any fashion; and

WHEREAS, the Parties have entered into this Stipulation and Agreed Order.

NOW THEREFORE, the Parties hereby stipulate and agree as follows, by and through their respective counsel of record, and it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. No Trust Involvement. No Trust representative shall appear and/or testify in the Hanover Action, and/or any other matter between Mr. Fose and Mrs. Fose, without further Order of this Court.

2. Withdrawal of the Remaining Contempt Relief. The Remaining Contempt Relief is hereby withdrawn without prejudice, subject to renewal to the extent the Trust is brought back into the matter in any fashion.

3. Reservation of Rights and Consent to Jurisdiction. The Trust reserves all rights and claims against Mr. Fose and his divorce counsel pertaining to the issuance of the Hanover Subpoenas, the Contempt Motion, and the Contempt Order. Mr. Fose and his divorce counsel reserve all rights, claims and/or defenses, if any, to the Contempt Motion and Contempt Order. Mr. Fose and his divorce counsel and Ms. Fose and her divorce counsel submit to the jurisdiction of the Bankruptcy Court as to the interpretation and enforcement of this Stipulation and Agreed

Oder, the Contempt Motion, and the Contempt Order, and, pursuant to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), agree that the Bankruptcy Court shall retain jurisdiction thereto.

4. Immediate Effect. This Stipulation and Agreed Order shall be immediately enforceable and effective and any applicable stay is hereby waived.

Dated: Dec 23 2020
Richmond, Virginia

/s/ Kevin R Huennekens

Kevin R. Huennekens, United States
Bankruptcy Judge

Entered On Docket: Dec 29 2020

IT IS SO STIPULATED:
BRANDI M. EVANS-FOSE

/s/ Brian H. Jones (via email dated 12/14/20)
(Permission to affix signature on file)
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CIRCUIT CITY STORES, INC.
LIQUIDATING TRUST

/s/ Paula S. Beran

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Liquidating Trust

DAVID FOSE

/s/Robert S. Westermann (Permission to affix signature received via email dated 12/14/20)
Robert S. Westermann (VSB No. 43294)
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Counsel for David Fose

CERTIFICATE OF ENDORSEMENT

I hereby certify, under Local Rule 9022-1, that the foregoing proposed Stipulation and Agreed Order has been endorsed and/or served upon all necessary parties.

/s/ Paula S. Beran

Paula S. Beran, Esquire